

Served: January 2, 1997

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 26th day of December, 1996

Applications of

AIR ATLANTIC DOMINICANA, C. POR A.

AIR ESPANA, S.A. TRADING AS AIR EUROPA

AIR HOLLAND CHARTER B.V.

ALL NIPPON AIRWAYS CO., LTD.

JAPAN AIR CHARTER CO., LTD.

JAPAN AIR SYSTEM COMPANY, LTD.

JAPAN AIRLINES COMPANY, LTD.

MAGADAN AIRLINES

for exemptions or authorities under 49 U.S.C.
section 40109 and the orders and regulations
of the Department of Transportation

OST-96-
1863

OST-96-
1949

OST-96-
1987

OST-95-820

OST-95-819

OST-95-818

OST-95-674

OST-95-843

OST-95-814

OST-95-844

OST-95-842

OST-95-841

OST-95-662

OST-96-
1710

ORDER

The foreign air carriers referenced in the attached Notices of Action Taken have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken. Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its foreign air carrier permit, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or our aviation relationship with the applicant's homeland, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

For applicant carriers seeking initial operating authority, we determined, based on the record in those proceedings, that those carriers were financially and operationally qualified to conduct the services they proposed, and, unless otherwise noted, that they were substantially owned and effectively controlled by citizens of their respective homelands.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced foreign air carriers (1) exemptions from the provisions of sections 41301, and where necessary 41504, and/or other sections of Title 49 of the U.S. Code; and/or (2) relief or authorizations provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in Appendix A, and to any other conditions as noted in the attached Notices of Action Taken;
3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and
4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10)

days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

Appendix A

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

(8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;

(9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

(41301/40109) 12/96



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-96-1863

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Air Atlantic Dominicana, C. por A.** Date Filed: October 15, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in scheduled foreign air transportation of persons, property and mail between Santo Domingo, Dominican Republic, and the coterminal points San Juan, Puerto Rico; Miami, Florida; and New York, New York; and charters subject to the Department's rules.**

If renewal, date and citation of last action: Initial authority
Applicant representative: Pierre Murphy (202) 872-1679

Responsive Pleadings: On October 30, 1996, I.M.P. Group Limited c.o.b.a. Air Atlantic, a division of I.M.P. Group Limited (Air Atlantic), a foreign air carrier of Canada, filed an answer in response to Air Atlantic Dominicana's request stating that authorizing Air Atlantic Dominicana to do business using the name "Air Atlantic" would create a certain risk of public confusion with the services performed by Air Atlantic between Canada and the United States. (IMP's answer was accompanied by a motion to file an otherwise unauthorized document.) IMP requested that we defer action on the instant request until the trade name issue is resolved. Additional responsive pleadings, accompanied by motions to file otherwise unauthorized documents, were filed by the applicant and IMP Group.

DISPOSITION

Action: **Approved**

Action date: **November 21, 1996**

Effective dates of authority granted: **November 21, 1996-November 21, 1997**
(We grant the motions of IMP Group and the applicant to file an otherwise unauthorized documents.)

Basis for approval (bilateral agreement/reciprocity): July 22, 1986 bilateral aviation agreement between the United States and Dominican Republic (in force provisionally).

(over)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: The Dominican Republic is currently a Category 3 country under the FAA's International Aviation Safety Assessment Program (IASA), and foreign air carriers of the Dominican Republic are not permitted to serve the United States with their own aircraft and crews. Therefore, in the conduct of the operations authorized above, Air Atlantic Dominicana must wet lease aircraft from a duly authorized and properly supervised U.S. or foreign air carrier. In the event that the Dominican Republic is reclassified as a Category 1 country, and should Air Atlantic Dominicana then wish to operate its own aircraft and crews under the authority authorized above, it must first apply for and receive appropriate authority from the Department to conduct such services in its own right.

Special conditions/Partial grant/Denial basis/Remarks: We found that Air Atlantic is financially and operationally qualified to perform the services authorized above. We also found that Air Atlantic Dominicana is substantially owned and effectively controlled by citizens of the Dominican Republic. Air Atlantic Dominicana is privately owned corporation. All of its officers and key management personnel are Dominican Republic nationals. The applicant is properly licensed (Certificate of Exploitation #130) and designated (Note #22327, dated October 16, 1996) by its government to perform the services at issue here.

The only opposition to Air Atlantic Dominicana's application involves the carrier's name. IMP Group Limited (Air Atlantic) asks that we defer action on the instant application until the name issue is resolved. Part 215 of our rules limits our role in attempting to determine whether one carrier's name is confusingly similar to that of another carrier, and places the responsibility for resolving such disputes with the carriers involved, through trade names statutes and the courts. Therefore, we did not address the issue of possible name similarity in this proceeding. See Order 88-7-18.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-96-1949

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: Air Espana, S.A. trading as Air Europa Date Filed: November 14, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in scheduled foreign air transportation of persons, property and mail between Madrid, Spain, and Miami, Florida.**

If renewal, date and citation of last action: Initial authority
Applicant representative: Aaron A Goerlich (202) 822-9070

Responsive Pleadings: On December 2, 1996, Delta Air Lines filed an answer in response to Air Espana's request. (Delta's answer was accompanied by a motion to file an otherwise unauthorized document.) Delta states that it does not oppose grant of Air Espana's request provided that the Department is prepared to take appropriate action, including termination of Air Espana's authority at issue here, if the Government of Spain does not promptly authorize Delta to commence New York-Madrid service on June 1, 1997. In that regard, Delta urges us to limit Air Espana's Madrid-Miami authority to a period of 179 days. On December 3, 1996, Air Espana filed a reply. Air Espana states that Delta "fails to recognize that the circumstances of the U.S.-Spain bilateral relationship have changed over the past year" and that its Department exemption authority in the Madrid-New York market, the same market Delta seeks to serve, is already limited to 179 days. Air Espana further states that the Department should not needlessly escalate the issue by imposing the 179 day limitation on Air Espana's Madrid-Miami authority.

DISPOSITION

Action: **Approved in Part/Denied in Part** Action date: **December 6, 1996**
We deny Air Europa's request to the extent that it sought approval of the requested authority for a period of one year. We grant Delta's motion to file an otherwise unauthorized document.

Effective dates of authority granted: **December 6, 1996-May 30, 1997** {Since the
(over)

duration of the authority is for a period fewer than 180 days, this is not a license with reference to an activity of a continuing nature within the meaning of 5 USC 558(c)}. See 14 CFR 377.

Basis for approval (bilateral agreement/reciprocity): U.S.-Spain Air Transport Services Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Air Espana's foreign air carrier permit (Order 95-9-7)

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by:

Paul L. Gretch, Director

Office of International Aviation

under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)

As we have said before (see Order 96-6-27), the Spanish authorities have indicated through diplomatic communications that they are not prepared to accord a U.S. carrier permission to inaugurate service on the New York-Madrid route. We have responded that such permission is a bilateral right available under the Agreement. Taking into account our position that the Agreement provides for the introduction of scheduled combination services over the New York-Madrid route by additional carriers of both the United States and Spain, and taking into account further the lack of opposition to Air Europa's request, we are prepared to authorize Air Europa to commence the operation at issue here. However, in light of our concern over the previously expressed Spanish position, and the fact that notwithstanding Air Espana's assertions about changes in the U.S.-Spain relationship we have received no indication of a change in that expressed position, we are limiting our authorization to a period of 179 days. In addition, we are granting this authority strictly on the condition that the Spanish authorities will honor U.S. carrier rights to serve the New York-Madrid route as well as other routes available under the Agreement. We reserve the right to amend, modify, or revoke Air Europa's authority, without hearing, should such U.S. rights not be so honored.



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-96-1987

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Air Holland Charter B.V.** Date Filed: November 25, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in charter foreign air transportation of persons, property and mail between any point or points in the Netherlands; via intermediate points; and any point or points in the United States; and beyond.**

Air Holland also requests a statement of authorization (as amended) under Part 212 of our rules to wet lease aircraft to Icelandair, a foreign air carrier of Iceland, to be used by Icelandair on its authorized services between Iceland and New York, Ft. Lauderdale/Orlando, Florida, December 22, 1996-March 15, 1997. Air Holland proposes to operate approximately 32 round-trip charter flights on behalf of Icelandair.

If renewal, date and citation of last action: Initial authority

Applicant representative: Don H. Hainbach (202) 822-9070

Responsive Pleadings: No answers were filed in response to either of Air Holland's requests.

DISPOSITION

Action: **Approved**

Action date: **December 6, 1996**

We acted on both requests without awaiting expiration of the prescribed answer periods with the consent of all parties served.

Effective dates of authority granted: **December 6, 1996-December 6, 1997**

We also grant Air Holland's request for a statement of authorization under 14 CFR Part 212 to wet lease aircraft to Icelandair (not to exceed a total of 32 round-trip flights), December 22, 1996-March 18, 1997.

In the conduct of the charter operations authorized above, Air Holland may, without

(over)

prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves the Netherlands for purposes of carrying traffic between the United States and the Netherlands.

Basis for action: The exemption authority granted Air Holland to conduct charter operations between the Netherlands and the United States is encompassed by the Air Services Agreement between the United States and the Netherlands, as amended. The long-term wet lease (Fifth Freedom charter) authority granted Air Holland was based on effective reciprocity with the Netherlands.

We found that Air Holland is financially and operationally qualified to perform the services authorized above. Air Holland has been conducting charter operations throughout Europe since 1990. We also found that Air Holland is substantially owned and effectively controlled by citizens of the Netherlands. Air Holland is a privately owned and operated enterprise. All of its officers and key management personnel are Dutch nationals. The applicant is properly licensed and designated (diplomatic note VA/142073, dated December 5, 1996) by its government to perform the services at issue here. We have confirmed Air Holland's compliance with our aircraft liability requirements.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKETS OST-95-820/819 & 818

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **All Nippon Airways Co., Ltd.** Date Filed: November 20, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in scheduled foreign air transportation of persons, property and mail between (1) Tokyo, Japan, and New York, New York; (2) Nagoya, Japan, and Honolulu, Hawaii; and (3) Tokyo, Japan, and Orlando, Florida, via Washington D.C.**

If renewal, date and citation of last action: December 6, 1995, Order 95-12-13

Applicant representative: James L. Devall (202) 298-8660

Responsive Pleadings: On December 5, 1996, the State of Hawaii filed an answer in support of ANA's request to renew its Nogaya-Honolulu authority (Docket OST-95-819). No other pleadings were filed in response to ANA's requests.

DISPOSITION

Action: **Approved**

Action date: **December 9, 1996**

Effective dates of authority granted: **December 9, 1996-December 9, 1997**

Basis for approval (bilateral agreement/reciprocity): 1989 Memorandum of Understanding between the United States and Japan (1989 MOU)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: ANA's foreign air carrier permit (Order 87-11-27)

Special conditions/Partial grant/Denial basis/Remarks: The authority granted above must

be performed consistent with existing agreements between the United States and Japan.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-95-674

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **All Nippon Airways Co., Ltd.**

Date Filed: October 3, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in scheduled foreign air transportation of persons, property and mail between Osaka, Japan, and Guam.**

If renewal, date and citation of last action: October 13, 1995, Order 96-6-27

Applicant representative: James L Devall (202) 298-8660

Responsive Pleadings: None

DISPOSITION

Action: **Approved**

Action date: **October 25, 1996**

Effective dates of authority granted: **October 25, 1996-October 25, 1997**

Basis for approval (bilateral agreement/reciprocity): 1985 Memorandum of Understanding between the United States and Japan (1985 MOU)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign air carrier permit (Order 87-11-27)

Special conditions/Partial grant/Denial basis/Remarks: The authority granted above is subject to the terms of the 1985 MOU

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
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NOTICE OF ACTION TAKEN

DOCKET OST-95-843

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Air Charter Co., Ltd.** Date Filed: October 31, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in charter foreign air transportation of persons, property and mail between Japan and the United States, and other charters subject to the Department's rules.**

If renewal, date and citation of last action: December 6, 1995, Order 95-12-13

Applicant representative: Jeffrey N. Shane (202) 663-6909

Responsive Pleadings: None

DISPOSITION

Action: **Approved**

Action date: **December 2, 1996**

Effective dates of authority granted: **December 2, 1996-December 2, 1997**

Basis for approval (bilateral agreement/reciprocity): 1982 Memorandum of Understanding between the United States and Japan (1982 MOU)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Exemption Authority (Standard Conditions)

Special conditions/Partial grant/Denial basis/Remarks: The authority granted above (1) is subject to the prior approval requirements for charters set forth in Order 92-3-24, and (2) must be performed consistent with existing agreements between the United States and Japan.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
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NOTICE OF ACTION TAKEN

DOCKET OST-95-814

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Air System Company, Ltd.** Date Filed: November 19, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in scheduled foreign air transportation of persons, property and mail between Tokyo, Japan, and Honolulu, Hawaii, and charters subject to Part 212 of the Department's rules.**

If renewal, date and citation of last action: December 6, 1995, Order 95-12-13

Applicant representative: Anne D. Smith (202) 626-3600

Responsive Pleadings: On December 3, 1996, the State of Hawaii filed in support of JAS' renewal application. No other answers were filed.

DISPOSITION

Action: **Approved**

Action date: **December 5, 1996**

Effective dates of authority granted: **December 5, 1996-December 5, 1997**

Basis for approval (bilateral agreement/reciprocity): 1989 Memorandum of Understanding between the United States and Japan (1989 MOU)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Exemption Authority (Standard Conditions)

Special conditions/Partial grant/Denial basis/Remarks: Under the authority granted above, JAS must (1) comply with the prior approval requirements for charters set forth in Order 91-9-26, and (2) perform all services consistent with existing agreements between the United States and Japan.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
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NOTICE OF ACTION TAKEN

DOCKET OST-95-844

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Airlines Company, Ltd.** Date Filed: October 31, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in scheduled foreign air transportation of persons, property and mail between Japan and Maui, Hawaii, on a one-stop basis via any point in the United States that JAL is authorized to serve.**

If renewal, date and citation of last action: December 6, 1995, Order 95-12-13

Applicant representative: Jeffrey N. Shane (202) 663-6909

Responsive Pleadings: The State of Hawaii and the County of Maui filed in support of JAL's renewal request.

DISPOSITION

Action: **Approved**

Action date: **December 2, 1996**

Effective dates of authority granted: **December 2, 1996-December 2, 1997**

Basis for approval (bilateral agreement/reciprocity): 1989 Memorandum of Understanding between the United States and Japan (1989 MOU).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign Air Carrier Permit (Order 70-8-66)

Special conditions/Partial grant/Denial basis/Remarks: The authority granted above must be performed consistent with existing agreements between the United States and Japan .

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-95-842

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Airlines Company, Ltd.** Date Filed: September 20, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to (1) conduct scheduled combination service between Tokyo, Japan, and Atlanta, Georgia, and (2) conduct scheduled combination service between Tokyo, Japan, and Seattle, Washington, and to coterminimize Atlanta and Seattle in conjunction with JAL's Tokyo-Atlanta authority.**

If renewal, date and citation of last action: December 6, 1995, Order 95-12-13

Applicant representative: Jeffrey N Shane (202) 663-6909

Responsive Pleadings: None

DISPOSITION

Action: **Approved**

Action date: **October 17, 1996**

Effective dates of authority granted: **October 17, 1996-October 17, 1997**

Basis for approval (bilateral agreement/reciprocity): 1985 Memorandum of Understanding between the United States and Japan (1985 MOU)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign air carrier permit (Order 70-8-66)

Special conditions/Partial grant/Denial basis/Remarks: The authority granted above is subject to the terms of the 1985 MOU

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
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NOTICE OF ACTION TAKEN

DOCKET OST-95-841

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Airlines Company, Ltd.** Date Filed: October 31, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in (a) scheduled combination service between Tokyo, Japan, and Chicago, Illinois, via Seattle, Washington at a frequency of seven flights per week; and (b) scheduled all-cargo service between Tokyo, Japan, and Chicago, Illinois (JAL may serve Chicago as a coterminal point).**

If renewal, date and citation of last action: December 6, 1995, Order 95-12-13

Applicant representative: Jeffrey N. Shane (202) 663-6909

Responsive Pleadings: None

DISPOSITION

Action: **Approved**

Action date: **December 2, 1996**

Effective dates of authority granted: **December 2, 1996-December 2, 1997**

Basis for approval (bilateral agreement/reciprocity): 1989 Memorandum of Understanding between the United States and Japan (1989 MOU)

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign Air Carrier Permit (Order 70-8-66)

Special conditions/Partial grant/Denial basis/Remarks: The authority granted above must be performed consistent with existing agreements between the United States and Japan.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-95-662

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Airlines Company, Ltd.** Date Filed: n/a

Relief requested: **Sua sponte exemption from 49 U.S.C. 41301, modifying our action in Order 96-9-27, to the extent necessary to permit JAL to operate up to seven weekly combination frequencies between Sendai, Japan, and Honolulu, Hawaii, through December 2, 1996.**

If renewal, date and citation of last action: n/a

Applicant representative: Jeffrey N Shane (202) 663-6909

Responsive Pleadings: n/a

DISPOSITION

Action: **Approved**

Action date: **November 6, 1996**

Effective dates of authority granted: **November 6, 1996-December 2, 1996**

Basis for approval (bilateral agreement/reciprocity): Reciprocity with Japan

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Order 96-9-27 and JAL's foreign air carrier permit (Order 70-8-66)

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-95-662

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Japan Airlines Company, Ltd. .** Date Filed: n/a

Relief requested: **Sua sponte exemption from 49 U.S.C. 41301, modifying our action in Order 96-9-27, to the extent necessary to permit JAL to operate up to seven weekly combination frequencies between Sendai, Japan, and Honolulu, Hawaii, through January 6, 1997.**

If renewal, date and citation of last action: n/a

Applicant representative: Jeffrey N Shane (202) 663-6909

Responsive Pleadings: n/a

DISPOSITION

Action: **Approved**

Action date: **December 2, 1996**

Effective dates of authority granted: **December 2, 1996-January 6, 1997**

Basis for approval (bilateral agreement/reciprocity): Reciprocity with Japan

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Order 96-9-27 and JAL's foreign air carrier permit (Order 70-8-66)

Special conditions/Partial grant/Denial basis/Remarks:

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST-96-1710

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Magadan Airlines**

Date Filed: September 16, 1996

Relief requested: **Exemption from 49 U.S.C. 41301 to engage in scheduled foreign air transportation of persons, property and mail from a point or points in the Russian Federation, via intermediate points, to the coterminal points Anchorage, Alaska, and Seattle, Washington; and charters subject to the Department's rules**

If renewal, date and citation of last action: Initial authority

Applicant representative: Glenn Wicks (202) 637-6546

Responsive Pleadings : Alaska Airlines, Inc. and United Air Lines, Inc. each filed a number of pleadings in response to Magadan's request. Each carrier opposed, among other things, grant of any authority which would allow Magadan to continue what it characterizes as de facto code-share operations with Aeroflot-Russian International Airlines in the markets at issue here unless and until the Russian government permits each carrier to conduct code-share operations it has proposed; specifically, United's proposed code share with Lufthansa, and Alaska's proposed code share with Northwest. Magadan subsequently asked that we grant its request for underlying exemption authority and, with respect to its existing arrangement with Aeroflot, "authorize a transition to fully independent operations by January 30, 1997." Neither Alaska nor United opposed granting Magadan the underlying authority cited above, but both opposed approval of Magadan's request for a transition period.

DISPOSITION

Action: **Approved in part, dismissed in part** Action date: **October 25, 1996**

We granted Magadan's request to conduct the scheduled and charter services described above, subject to conditions, and dismissed its request to conduct any future operations carrying Aeroflot's designator code. Magadan may not perform such operations until it has applied for, and the Department has granted, a statement of authorization under 14 CFR Part 212 specifically authorizing the intercarrier arrangement. We also granted all motions for leave to file late pleadings.

Effective dates of authority granted: **October 25, 1996-October 25, 1997**

Basis for action: The authority we granted to Magadan is encompassed by the Air Transport Agreement between the United States and the Russian Federation, entered into force January 14, 1994. The Annexes

(over)

to the Agreement were scheduled to expire on May 31, 1995. During consultations on April 20, 1995, both sides indicated they would be prepared to extend the term of the Annexes through May 31, 1996. Pending formal confirmation of that intent the Annexes have continued to be observed on the basis of comity and reciprocity.

We found that Magadan is financially and operationally qualified to perform the services authorized above. We also found that Magadan is substantially owned and effectively controlled by citizens of the Russian Federation. Magadan is a state-owned enterprise, founded by the Magadan Regional Department of Air Transport. All of its officers and key management personnel are Russian nationals. The applicant is properly licensed and designated by its government to perform the services at issue here. We have confirmed Magadan's compliance with our aircraft liability requirements for two Russian-registered Tu-154 aircraft (RA-85677 & RA-85667).

As noted above, we dismissed Magadan's request to the extent the carrier requests that it be afforded a transition period to regularize its services under its own code. The type of authority Magadan would need to support such a request is a statement of authorization under Part 212 of our rules. No such Part 212 application has been filed. Should Magadan file the necessary application, we will consider it under our normal procedures, and based on the public interest standards contained in 14 CFR Part 212 of our rules. * In the meantime, however, the only authority Magadan holds is that which we awarded as described above.

This authority is subject to the conditions attached, and to the following:

(a) scheduled flights operated on a Pacific routing serving a point in the Russian Far East and points in the continental United States shall stop at Anchorage, Alaska; and

(b) in the conduct of charter operations (including any authorized code-share or wet lease operations), Magadan must comply with FAA-approved flight routings. To facilitate the establishment of satisfactory flight routings for Magadan's charter operations, we will require that Magadan obtain our prior approval under 14 CFR 212.4(f) of our rules before conducting any charter operations. Applications for statements of authorization required above shall be filed with the Department in accordance with the procedures set forth in section 212.5, and shall be simultaneously served on the Department of State and the FAA.

Action taken by:

Paul L. Gretch, Director
Office of International Aviation
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)

* In light of our dismissal, we did not reach the issues raised by the U.S. carriers in their various submissions on this aspect of Magadan's application.

